

Monster v. Monster

Albertha Lillian Monster, Plaintiff and Ralph George Monster, Defendant

Newfoundland Unified Family Court

Noonan J.

Judgment: January 22, 1988

Docket: No. F/86/495

Counsel: **David C. Day** Q.C. for the Plaintiff.

Thomas J. Burke, Esq. for the Defendant.

Noonan, J:

1 This is an application for a division of matrimonial assets pursuant to *The Matrimonial Property Act*. The plaintiff seeks an order for equal division. The defendant seeks an order for exclusive possession and unequal division.

Background

2 Mr. & Mrs. Monster were married on February 21, 1968. There is one child born of the marriage, Danny, whose birthday is November 8, 1970. The couple separated on September 22, 1985. Mr. Monster remained in the matrimonial home at 21 Eldon St., Fortune with Danny and Mrs. Monster moved to St. John's.

3 Mr. Monster is employed seasonally as a fisherman. He says he earned about \$20,000.00 in 1986. He has been the sole supporter of Danny since separation. Mrs. Monster is presently employed in two jobs and earns approximately \$600.00 per month. She rents a bachelor apartment which costs her \$90.00 per week. She says she has not been able to contribute to Danny's support.

4 Following separation both Mr. and Mrs. Monster retired certain marital debts. There is an issue of adjustment with respect to those debts.

5 Mrs. Monster is seeking an equal share of the matrimonial home which is unencumbered and has been appraised by Mr. Eric Grandy at \$22,500.00. Also, she wishes to have a silverware set, a collection of spoons and certain photo albums. She is prepared to release any interest she has with respect to a 1979 Chevrolet truck and the household contents. In addition, she asserts no interest in a fishing premises on Brunett Island and she is prepared to let Danny have a ski-doo and motor bike. She is not

seeking an order for occupational rent.

6 Mr. Monster says the best he can do is pay Mrs. Monster \$100.00 per month, presumably in an effort to purchase her share in the matrimonial home. He says that he will be unable to raise any money to purchase his wife's share because his "credit rating is gone". There was no documentary evidence to support this assertion. He says that his income from fishing is uncertain and unpredictable and there are significant expenses associated with the enterprise. He says he has to look after Danny's needs and to maintain the home. Interestingly, Mr. Monster financed the purchase of a motor vehicle for Danny in 1987 through Chrysler Corporation. The vehicle cost \$16,000.00 and Danny does not have a driver's license.

Marital debts

7 At the time of separation there were debts owing to AVCO and HFC which Mrs. Monster subsequently retired. There were debts owing to Lake & Lake, Lloyd Lake and Newfoundland Telephone Co. which were paid by Mr. Monster. In addition there was a debt owing on the Chevrolet Truck which was being retired at the rate of \$214.00 per month. Mr. Monster has retained possession of the vehicle and has used it for his work. Mrs. Monster is prepared to release her interest in the vehicle. I think the debt with respect to that vehicle should not fall into the marital division. Mrs. Monster will convey her interest to Mr. Monster and he will release her of any liability with respect to that debt.

8 The only evidence I have with respect to the debts is that of Mr. and Mrs. Monster. On the evidence before me I find the following sums to be marital debts which are to be shared equally:

MRS. MONSTER			

AVCO	\$ 500.00		
H.F.C.	900.00		

	\$1,400.00		\$1,400.00
MR. MONSTER			

Lake & Lake	\$ 250.00		
Lloyd Lake	300.00		
Nfld. Telephone Co.	519.00		

	\$1,069.00		\$1,069.00
TOTAL MARITAL DEBTS			\$2,469.00

ONE-HALF SHARE	\$1,234.50		
Amount paid by			
Mr. Monster	1,069.00		
Balancing claim to be			
paid by Mr. Monster	\$ 165.50		\$ 165.50
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Exclusive Possession

9 *The Matrimonial Property Act* provides a discretion in the court to order exclusive possession in

certain circumstances. The relevant subsection of section 13 follows:

s. 13(3) The court may only make an order for exclusive possession of the matrimonial home under subsection (1) or (2) where, in the opinion of the court

(a) other provision for shelter is not adequate in the circumstances; or

(b) it is in the best interests of a child to make such an order.

10 The determination of an application for exclusive possession of the matrimonial home to a spouse, is a two step process. Having first decided whether either of the criteria for exclusive possession have been established by the applicant spouse, the court can exercise its discretion in determining whether or not to grant the relief.

11 There was no evidence led in this case with respect to the adequacy or otherwise of alternate accommodation. There was no compelling evidence that would support a finding that it would be in Danny's best interest to remain in the matrimonial home. The first step in the decision-making process has not been satisfied so the second step becomes unnecessary. Mr. Monster's claim for exclusive possession is denied.

Unequal Division

12 The scheme of *The Matrimonial Property Act* is that there is to be an equal sharing of matrimonial assets unless such a division is grossly unjust and unconscionable. The Act provides a number of factors which are relevant in such a determination. The text of *section 20 of The Act* provides:

s.20 The court may make a division of matrimonial assets that is not equal where the court is satisfied that a division of these assets in equal shares would be grossly unjust or unconscionable taking into account any of the following factors:

(a) the income, earning capacity, property and other financial resources that each of the spouses has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities that each of the spouses has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the spouses before the breakdown of the marriage;

(d) the age of each party;

(e) the duration of the marriage;

(f) any physical or mental disability of either of the spouses;

(g) the contributions made by each of the spouses to the welfare of the family, including any contribution made by a spouse in looking after the matrimonial home or caring for the family;

(h) the loss of a potential benefit that a spouse loses by reason of a dissolution or annulment of the marriage;

(i) the unreasonable impoverishment or dissipation of matrimonial assets by either of the spouses;

(j) the length of time that the spouses have lived separate and apart from each other during the marriage; or

(k) the date of acquisition of each matrimonial asset.

13 Mr. Monster argues that there should be an unequal division of matrimonial assets in his favour because he has been the sole support of Danny since separation.

14 In *Gabriel v. Gabriel (1983)*, 41 Nfld. & P.E.I.R. 46 Goodridge J. (as he then was) characterized the criteria for unequal division of matrimonial assets as "extreme words". He said that unequal division "could only be made in extreme circumstances". At page 48 of the decision he said:

The philosophy of The Act leans towards an equal distribution of property. There is no doubt that in any marriage, particularly in a marriage that failed, the contribution of the spouses to the marriage will not necessarily be equal. One weighs, of course, not only the material contribution but also the other contributions, more difficult to assess, generally made by a wife, such as the keeping of the home and the raising of the children.

15 Mr. Justice Cummings in *Barry v. Barry (1981)*, 35 Nfld. & P.E.I.R. 91 at p. 98 says of section 20:

[it] ... seems to be saying that a small injustice is to be ignored and that it is only where injustice is blatant that the courts should divide unequally ... the section certainly emphasizes that the intent of the Act is by and large that assets be divided equally and there is indeed a very heavy onus on the spouse asking for unequal distribution.

16 In this case both Mr. and Mrs. Monster worked outside the home and contributed to the financial resources of the family. They both presumably participated in homemaking and child-raising. The marriage was sustained for seventeen and one-half years. I see no reason whatever on the evidence before me to divide the assets of this marriage unequally. Mr. Monster's claim for unequal division is denied.

Household contents

17 There is no independent evidence before me with respect to the value of the household contents

and, in any case, Mrs. Monster is satisfied that Mr. Monster retain them with no compensating claim being paid to her.

18 The items which Mrs. Monster wishes to recover no longer exist. As I have no evidence with respect to the value of those assets I am unable to compensate her in this action.

Summary

19 In summary it is ordered that:

1. The defendant's claim for exclusive possession and unequal division are denied.
2. The plaintiff's claim for equal division is allowed.
3. There is no order for occupation rent.
- 4.(a) The defendant has the option until June 30, 1988 to purchase Mrs. Monster's one-half interest in the matrimonial home situated at 21 Eldon St., Fortune. The purchase price is one-half the appraised value. The defendant is to insure the property while he is in possession and until he exercises his option to purchase or the property is sold.
 - (b) If the defendant does not exercise his option to purchase the plaintiff's one-half interest on or before June 30, 1988 the property is to be sold at not less than 90% of its appraised value as determined by Mr. Eric C. Grandy at \$22,500.00.
 - (c) Conduct of the sale is in the hands of the Sheriff who shall list the property for sale on or before July 15, 1988. The Sheriff may show prospective purchasers through the property.
 - (d) Prior to the sale the Sheriff may effect such repairs, maintenance and cleaning of the matrimonial home as, in his opinion, may render the same more suitable for sale.
 - (e) Upon sale the proceeds, subject to the rights of persons not before the court, shall be applied to pay the following:
 - (i) Municipal and school taxes outstanding;
 - (ii) The cost of work done under sub-paragraph (d) for which acceptable vouchers are provided;
 - (iii) Real estate appraisal costs and commissions and legal expenses attendant upon the sale.
 - (f) The balance remaining after paying the disbursements outlined in sub-paragraphs (d) and (e) shall be divided equally between the parties.
 - (g) If, within six months from his offering the property for sale, the Sheriff has not been able to

effect a sale, he may negotiate a sale for a price less than 90% of the appraised value but subject to the approval of the parties in writing, or if the parties are unable to agree, the Sheriff or either party may apply to the court for a determination of whether or not the sale at such price should be approved;

(h) When the defendant exercises his option to purchase the plaintiff's interest or a sale is negotiated, both parties shall sign all instruments necessary for effectuating the agreement of sale and the conveyance and other documents or papers in writing that may be necessary in connection therewith;

(i) If either party refuses to execute any such instrument or document, the other party may apply to the court for an Order pursuant to Rule 26 of *The Judicature Act*.

5. The plaintiff shall release any interest she may have in the defendant's fishing premises on Brunett Island.

6. The defendant may retain his 1979 Chevrolet truck. He shall release the plaintiff from any and all liability for the debt which relates to this motor vehicle.

7. The defendant shall pay the plaintiff the sum of \$165.50 to balance the equal division of marital debts.

8. The defendant may retain the household contents without paying the plaintiff any compensation.

9. Each party may retain the matrimonial assets which are presently in his or her possession.

10. Each party shall release his or her interest in the ski-doo and motor bike in favour of Danny Monster.

11. Each party shall bear his or her own costs.

20 Order accordingly.

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